IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 12TH FEBRUARY 2007 / 23RD MAGHA 1928

RP.No. 83 of 2007(K)

AGAINST THE JUDGEMENT/ORDER IN WPC.4932/2005 Dated 20/09/2006

.....

REVIEW PETITIONER/RESPONDENTS .

---

1. KOTTAKKAVU ST.THOMAS CHURCH,
   NORTH PARAVUR.

2. KOTTAKKAVU ST.THOMAS CHURCH,
   REPRESENTED BY PRESENT VICAR FR.VINCENT
   PARAMBITHARA, S/O.ULAHANNAN, AGED 52 YEARS,
   RESIDING AT THE PRESBITORY OF THE CHURCH.

3. KOTTAKKAVU ST.THOMAS CHURCH,
   REPRESENTED BY ITS TRUSTEE,
   BABY, S/O.KARAYIL YOHANNAN,
   PARAVOOR VILLAGE.

4. KOTTAKKAVU ST.THOMAS CHURCH,
   REPRESENTED BY ITS TRUSTEE,
   CHERIAN ALIAS SKARIA, S/O.NEDUNTHALLI
   MALIYAKKAL POULOSE, PARAVOOTHARA MURI,
   PARAVOOR VILLAGE.

BY ADV. SRI.JIMMY JOHN VELLANIKARAN

RESPONDENTS/PETITIONER:

---

1. ELEESWA, W/O.ITTEERA,
   PAYYAPPILLI, PARAVOOTHARA MURI,
   PARAVUR VILLAGE.

2. JOSEPH, S/O.ITTEERA, PAYYAPPILLI,
   PARAVOOTHARA MURI, PARAVUR VILLAGE.

BY ADV. SRI.S.V.BALAKRISHNA IYER(SR)
SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 12/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

R.P.83 OF 2007

IN

W.P.(C)NO.4932 OF 2005

DATED THIS THE 12th DAY OF FEBRUARY, 2007

ORDER

As per judgment dated 20.9.06, the order passed by learned Munsiff was set aside and direction was issued to refer the question of kudikidappu to the appropriate Land Tribunal as provided under Section 125(3) of Kerala Land Reforms Act. In paragraph seven of the judgment, it has been specifically stated that case of defendants was not that the building was entrusted to them but building was constructed by their predecessor. In view of that specific case, in paragraph eight of the judgment, it is stated that the claim for kudikidappu right was raised as provided under Sub Clause (a) of Section 2(25) of KLR Act. But unfortunately, a typographic error occurred in the last portion of the judgment to the effect that defendants are basing their claim only under Sub Clause (b) of Section 2(25) of KLR Act. So long as defendants have no case that the building was constructed by landlord and was entrusted to them Sub Clause (b) of Section 2(25) will not arise. When it was the specific case of defendants that their predecessors constructed the building, the

claim can only be as provided under Sub Clause (a) of Section 2(25) of K.L.R. Act. Therefore the last sentence of the judgment is corrected to the effect that defendants are basing their claim only under Sub Clause (a) of Section 2(25) of K.L.R. Act.

2. Learned Senior Counsel appearing for respondents vehemently argued that when a reference is to be made to Land Tribunal, this Court need not restrict the power of Land Tribunal to decide whether Sub Clause (a) or Sub clause (b) is applicable and it is to be left opened to be decided by Land Tribunal. When this Court has already considered and held that the claim was raised on the basis that the building was put up by predecessor of respondents and not by the landlord, I do not find it necessary to leave that question to Land Tribunal as canvassed by learned Counsel.

Land Tribunal has to consider whether defendants are kudikidappukars as defined under Sub Clause (a) of Section 2(25) of Kerala Land Reforms Act. Judgment is reviewed to that extent.

M.SASIDHARAN NAMBIAR,JUDGE

Acd